

City of Santa Fe, New Mexico

LEGISLATIVE SUMMARY

Bill No. 2016-11

Enterprise Fund Amendments

SPONSOR(S): Councilor Dominguez

SUMMARY: The proposed bill amends Subsection 11-12.1 SFCC 1987 to remove the provision permitting payment to the City in lieu of taxes from enterprise funds, and removes the sunset clause.

PREPARED BY: Jesse Guillen, Legislative Liaison

FISCAL IMPACT: Yes

DATE: February 15, 2016

ATTACHMENTS: Bill
FIR

1 CITY OF SANTA FE, NEW MEXICO

2 BILL NO. 2016-11

3 INTRODUCED BY:

4
5 Councilor Carmichael A. Dominguez
6
7
8
9

10 AN ORDINANCE

11 AMENDING SUBSECTION 11-12.1 SFCC 1987 TO REMOVE THE PROVISION
12 PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE
13 FUNDS; AND REMOVING THE SUNSET CLAUSE.
14

15 BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF SANTA FE:

16 Section 1. Subsection 11-12.1 SFCC 1987 (being Ord. #1997-4 (as amended)) is
17 amended to read:

18 11-12.1 Enterprise Fund Expenditures.

19 A. All revenues generated by enterprise funds, including bond and grant proceeds,
20 shall be expended solely for the purposes of their respective enterprise funds.

21 B. All revenues in excess of that needed to pay for operations and maintenance,
22 capital outlays, bond debt service and similar revenue expenditures shall remain within their
23 respective funds unless a failure to transfer the funds would constitute a violation of law or an
24 impairment of an existing contract, or is made in accordance with paragraph D of this section.

1 C. Net revenue generated by enterprise funds shall be used for capital investment,
2 repair and replacement, debt management, working capital, and transfers to the general fund.


3 D. On an annual basis, the governing body may authorize a transfer to the general
4 fund in an amount not to exceed twelve percent (12%) of the three (3) year average total
5 operating revenues based on the previous two years' actual revenues reported in the city's annual
6 audit, after allowing the enterprise to meet all of its operating expenses and debt service
7 obligations, and providing for 45 days of working capital. Prior to such transfer of enterprise
8 funds to the general fund, an analysis shall be performed to ensure that such a transfer would not
9 require an enterprise fund rate increase; negatively affect bond ratings associated with the specific
10 enterprise fund or be inconsistent with NMSA 1978, § 3-23-4. The city may charge the enterprise
11 fund for duly incurred non-routine costs of city services attributable to operation and maintenance
12 of the enterprise or enterprise fund.

13 ~~[E. The city may charge the enterprise fund the reasonable value of costs of city
14 services attributable to operation and maintenance of the enterprise or enterprise fund.]~~

15 [F]E. This ordinance is not intended to be construed to affect, amend or repeal any
16 provision of any bond ordinance and is not intended to pertain to the collection of payments in
17 lieu of taxes/fees or the convention center enterprise fund.

18 ~~[G. Paragraph D of this section shall expire on June 30, 2016. Paragraph E shall take
19 effect July 1, 2016.]~~

20 APPROVED AS TO FORM:

21 
22 _____
23 KELLEY A. BRENNAN, CITY ATTORNEY

24
25 *M/Legislation/Bills 2016/Enterprise Fund Amendments*

City of Santa Fe Fiscal Impact Report (FIR)

This Fiscal Impact Report (FIR) shall be completed for each proposed bill or resolution as to its direct impact upon the City's operating budget and is intended for use by any of the standing committees of and the Governing Body of the City of Santa Fe. Bills or resolutions with no fiscal impact still require a completed FIR. Bills or resolutions with a fiscal impact must be reviewed by the Finance Committee. Bills or resolutions without a fiscal impact generally do not require review by the Finance Committee unless the subject of the bill or resolution is financial in nature.

Section A. General Information

(Check) Bill: X Resolution: _____

(A single FIR may be used for related bills and/or resolutions)

Short Title(s): AN ORDINANCE AMENDING SUBSECTION 11-12.1 SFCC 1987 TO REMOVE THE PROVISION PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE FUNDS; AND REMOVING THE SUNSET CLAUSE.

Sponsor(s): Councilor Dominguez

Reviewing Department(s): Finance Department

Persons Completing FIR: Oscar Rodriguez Date: 2/16/16 Phone: x6530

Reviewed by City Attorney: *Kelley A. Brennan* Date: 2/16/16
(Signature)

Reviewed by Finance Director: *[Signature]* Date: 2-16-2016
(Signature)

Section B. Summary

Briefly explain the purpose and major provisions of the bill/resolution:

This bill would amend Section 11-12 regarding enterprise funds to remove an expiration date/effective date. The provision that would become effective on July 1, 2016 to permit the city to bill the enterprise fund for the costs of city services would be removed.

Section C. Fiscal Impact

Note: Financial information on this FIR does not directly translate into a City of Santa Fe budget increase. For a budget increase, the following are required:

- a. The item must be on the agenda at the Finance Committee and City Council as a "Request for Approval of a City of Santa Fe Budget Increase" with a definitive funding source (could be same item and same time as bill/resolution)
- b. Detailed budget information must be attached as to fund, business units, and line item, amounts, and explanations (similar to annual requests for budget)
- c. Detailed personnel forms must be attached as to range, salary, and benefit allocation and signed by Human Resource Department for each new position(s) requested (prorated for period to be employed by fiscal year)*

1. Projected Expenditures:

- a. Indicate Fiscal Year(s) affected – usually current fiscal year and following fiscal year (i.e., FY 03/04 and FY 04/05)
- b. Indicate: "A" if current budget and level of staffing will absorb the costs
"N" if new, additional, or increased budget or staffing will be required
- c. Indicate: "R" – if recurring annual costs
"NR" if one-time, non-recurring costs, such as start-up, contract or equipment costs
- d. Attach additional projection schedules if two years does not adequately project revenue and cost patterns
- e. Costs may be netted or shown as an offset if some cost savings are projected (explain in Section 3 Narrative)

Finance Director: _____

_____ Check here if no fiscal impact

Column #:	1	2	3	4	5	6	7	8
	Expenditure Classification	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs Recurring or "NR" Non-recurring	FY _____	"A" Costs Absorbed or "N" New Budget Required	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected

Personnel*	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Fringe**	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Capital Outlay	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Land/ Building	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Professional Services	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
All Other Operating Costs	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____
Total:	\$ _____	_____	_____	\$ _____	_____	_____	_____	_____

* Any indication that additional staffing would be required must be reviewed and approved in advance by the City Manager by attached memo before release of FIR to committees. **For fringe benefits contact the Finance Dept.

2. Revenue Sources:

- a. To indicate new revenues and/or
- b. Required for costs for which new expenditure budget is proposed above in item 1.

Column #:	1	2	3	4	5	6
	Type of Revenue	FY _____	"R" Costs Recurring or "NR" Non-recurring	FY _____	"R" Costs -- Recurring or "NR" Non-recurring	Fund Affected

_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
_____	\$ _____	_____	\$ _____	_____	_____	_____
Total:	\$ _____	_____	\$ _____	_____	_____	_____

3. Expenditure/Revenue Narrative:

Explain revenue source(s). Include revenue calculations, grant(s) available, anticipated date of receipt of revenues/grants, etc. Explain expenditures, grant match(s), justify personnel increase(s), detail capital and operating uses, etc. (Attach supplemental page, if necessary.)

This action will formalize and make more transparent the long-standing practice of using excess revenue from the utility funds to cover expenditures in the General Fund. It will also provide for proper cost accounting within the utility funds by recognizing the economic value of using the City's right-of-way (ROW). The formula for arriving at the transfer amount prescribed with this action will also provide greater certainty to the utilities' managers, as now they will know exactly the cash resources they have to work with each fiscal year after the transfers are accounted for.

According to the formula, the approximate amount that will be transferred from the Water Fund is \$4.7 million. The amounts that will be transferred from the Wastewater and Solid Waste Funds will be equal to the value of the service they currently provide to the non-utility departments, currently estimated at \$1.3 million. These estimates will be updated as part of the budget process with the benefit of a couple more months of revenue experience.

Section D. General Narrative

1. Conflicts: Does this proposed bill/resolution duplicate/conflict with/companion to/relate to any City code, approved ordinance or resolution, other adopted policies or proposed legislation? Include details of city adopted laws/ordinance/resolutions and dates. Summarize the relationships, conflicts or overlaps.

None identified.

2. Consequences of Not Enacting This Bill/Resolution:

Are there consequences of not enacting this bill/resolution? If so, describe.

Not adopting a formal policy that accounts for the economic value of the City's ROW to the utilities will impede cost accounting and have the effect of allocating General Fund resources to the Utilities.

3. Technical Issues:

Are there incorrect citations of law, drafting errors or other problems? Are there any amendments that should be considered? Are there any other alternatives which should be considered? If so, describe.

None identified.

4. Community Impact:

Briefly describe the major positive or negative effects the Bill/Resolution might have on the community including, but not limited to, businesses, neighborhoods, families, children and youth, social service providers and other institutions such as schools, churches, etc.

The formula prescribe in this ordinance ensures transparency in the use of public funds and limit the impact on utility rates.

ACTION SHEET
ITEM FROM FINANCE COMMITTEE MEETING OF 03/21/16
FOR CITY COUNCIL MEETING OF 03/30/16

ISSUE:

37. Request for Approval of an Ordinance Amending Subsection 11-12.1 SFCC 1987 to Remove the Provision Permitting Payment to the City in Lieu of Taxes From Enterprise Funds; and Removing the Sunset Clause. (Councilor Dominguez) (Oscar Rodriguez)

Committee Review:

Public Works Committee (approved)	02/22/16
City Council (request to publish) (approved)	02/24/16
City Council (public hearing) (scheduled)	03/30/16

Fiscal Impact – Yes - According to the formula, the approximate amount that will be transferred from the Water Fund is \$4.7 million. The amounts that will be transferred from the Wastewater and Solid Waste Funds will be equal to the value of the service they currently provide to the non-utility departments, currently estimated at \$1.3 million. These estimates will be updated as part of the budget process with the benefit of a couple more months of revenue experience.

FINANCE COMMITTEE ACTION:

Approved as discussion item.

FUNDING SOURCE:

SPECIAL CONDITIONS OR AMENDMENTS

STAFF FOLLOW-UP:

VOTE	FOR	AGAINST	ABSTAIN
COUNCILOR VILLAREAL	X		
COUNCILOR IVES	X		
COUNCILOR LINDELL	X		
COUNCILOR HARRIS	X		
CHAIRPERSON DOMINGUEZ			

**ACTION SHEET
ITEM FROM THE
PUBLIC WORKS/CIP AND LAND USE COMMITTEE MEETING
OF
MONDAY, FEBRUARY 22, 2016**

ITEM 11

REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SUBSECTION 11-12.1 SFCC 1987 TO REMOVE THE PROVISION PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE FUNDS; AND REMOVING THE SUNSET CLAUSE **(COUNCILOR DOMINGUEZ)** **(OSCAR RODRIGUEZ)**

PUBLIC WORKS COMMITTEE ACTION: Approved

FUNDING SOURCE:

SPECIAL CONDITIONS / AMENDMENTS / STAFF FOLLOW UP:

VOTE	FOR	AGAINST	ABSTAIN
CHAIRPERSON TRUJILLO			
COUNCILOR BUSHEE		X	
COUNCILOR DIMAS	Excused		
COUNCILOR DOMINGUEZ	X		
COUNCILOR IVES	X		

There will be a time where we have to get down to one or none at all. But at some point we will have to do that. This is just intended that we not miss any opportunity for our taxing authority.

Councilor Bushee said it is incumbent on the Committee to winnow out options. It is confusing to the public. We haven't taken anything off the table and we need to do that. Hold harmless could take place down the road when we know what the State is about to do. We have been paying for salaries out of CIP bonds and she would correlate this more specifically with the deficit. It is something that should be done at the committee level.

Councilor Dominguez said he intended, at the next Finance Committee agenda, to take action on one or the other where we will get that revenue. If we wait too long, there is no doubt that the County is likely to take some of it away from the City.

Councilor Bushee thought we were going to have a meeting with the County on it.

Councilor Ives pointed out that they know the hold harmless payments are disappearing and the total of the payments from the City are going to be reduced to ultimately \$10-22 million annually. The State realized it was causing the cities and counties to go into deficit. This reduction for hold harmless needs to go to whole Council. It is incumbent on the Committee to keep it alive for a decision by the whole Council.

He said he shared some of the concerns that the County will put in another 1/8. And the lack of precise drafting of the original measure has seen some electing to go with 3/8. We are not proposing to do that here in a very traditional 1/8 increment. So he supported the measure.

Councilor Maestas cautioned that the City should not engage in a race with the County to increase taxes. We are now at 8.135% and implementing this would put us in the top ten in the state. We will reach a point of diminishing returns and could hurt our citizens and thwart economic development here. The disadvantage is in considering this serious process. It will go through the election and composition of committees will be different under a new administration. So this is like a perfect storm with new policy measures and a new paradigm. And Finance was cancelled in February, he assumes the new Finance Committee will take this on at the March 21 meeting. That is the Committee to have the robust debate. It is awkward and slamming taxes down the community's throat.

Chair Trujillo said they will have the discussion at Finance where they will take action. He didn't know what the new Finance Committee will look like. But the public can't say we are not being honest with them.

The motion passed by majority voice vote with all voting in favor except Councilor Bushee who dissented.

11. REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SUBSECTION 11-12.1 SFCC 1987 TO REMOVE THE PROVISION PERMITTING PAYMENT TO THE CITY IN LIEU OF TAXES FROM ENTERPRISE FUNDS; AND REMOVING THE SUNSET CLAUSE (COUNCILOR DOMINGUEZ) (OSCAR RODRIGUEZ)

Committee Review:

Council (Request to publish)
Finance Committee (Scheduled)

02/24/16
02/29/16

Councilor Bushee asked for Mr. Rodriguez to come forward but he was not present.

Councilor Bushee said the City would not raise the water payments. She asked if that means the City will continue to raid the Water Fund forever.

Councilor Dominguez clarified that this allows for the franchise fee.

Councilor Bushee said it also essentially gives a green light to continue raiding the water fund each year.

Councilor Bushee moved to deny this request. The motion failed for lack of a second.

Councilor Dominguez moved for approval and to listen to Councilor Bushee's suggestion.

He said he would like to hear Councilor Bushee's proposal for balancing the city budget. He noted that the General fund has subsidized the water department with the quarter percent. This is not to be a debate about semantics. The intent here is just to allow us to utilize the franchise fee and charge the utility.

Councilor Ives seconded the motion.

Mr. Rodriguez returned.

Councilor Bushee noted she had sponsored a bill to have enterprise funds stand on their own and not raid the General Fund. She understood about the \$7 million that goes to the General Fund from Gross Receipts but that is backing up debt service that we can remove at the moment. But we are trying to stop bridging strategies. This is, in effect, reverse engineering with 12% for a franchise fee and we should talk about that separately. Picking a number, we need to balance the budget is not exactly a rationale for establishing a franchise fee.

The law was put into effect and should be upheld. Why would you undo it and kick the can down the road and keep going back to the same well? She had seen more ways to spend that reserve and was still astounded that we would try to right the ship and correct the policies that were misguided. Philosophically this is just plain wrong. There is a franchise fee for PNM, NMGC and Comcast. So why do we have to undo the laws. It created a giant balance that is now treated as the Bank of Santa Fe.

Mr. Rodriguez said that touches correctly on all of the relevant points. He agreed and strongly suggested not to kick the can down the road and that the report should show the expenses where they are incurred. The Council continues to raid the water fund because it cannot get the cash to keep operating without it.

Councilor Bushee asked if he believed those IOU's would be paid back.

Mr. Rodriguez believed it has been the Council's intent to pay them back. The Council passed the resolution to have no transfers at all from the water fund. And that put the City in an untenable situation. Currently there are a number of city funds that are running in the negative and the cash they are using to keep operating is borrowed in the IOU from the water fund.

Councilor Bushee said in order to do this reverse engineered franchise fee means they would keep kicking the can down the road.

Mr. Rodriguez agreed, if the Council doesn't charge for the use of the ROW ...

Councilor Bushee said that is blowing it wide open.

Mr. Rodriguez said it is crafted not to push the rates up. This is paid for after all obligations are met from the excess and specifically not to raise rates. That is shown on page 2. Also, the 12% corresponds to the highest the City can go to raise the rates.

Councilor Bushee said that 12% needs to be adjusted. She asked why it has to change a law to do it. She asked why it couldn't be done like the franchise fee the City charges to PNM and NMGC. That 12% is three times what is charged to any other utility.

Mr. Rodriguez asked when the last time was that the electric company caused a street to be closed.

Councilor Bushee said the Gas Company has done that numerous times. There have even been explosions in the City.

Mr. Rodriguez said the point is that they have a bigger footprint than any other utility. 12% is as high as the City can go and is a rate that has been litigated in the region a lot. The right-of-way doesn't belong to the utility; it belongs to the City.

Councilor Bushee said the City should then charge every department for water, including the effluent at the golf course. The bond counsel was the same one who recommended the increases in the rates. It is reverse engineering. How is the Water Trust Board going to give us more money if we continue to use the water fund? We should never have used that money. Beyond the 12%, she still didn't understand taking away the sunset clause. It is not how to run a business. It is not for our political agenda.

Mr. Rodriguez said he asked the City's financial advisor what the market thinks about the city not transferring the money from the utility. The answer was that the market probably doesn't believe it. This sets a limit. This says for all the things we use out of Water fund is limited to 12%. The transfer was only 3.8%.

Councilor Bushee disagreed with that but she didn't have the information. But there could be a huge infrastructure cost needed for the water utility some time.

Mr. Rodriguez pointed to section B that said the transfer is made only after the costs of the utility have been met.

Councilor Bushee warned that he better not come back with a rate increase. She thought this is egregious - completely the wrong way to go on it. It would misuse and create mistrust for the rate payers to use the reserve funds as a bank is just wrong.

Councilor Maestas supported the concept of the franchise fee and had worked on defining the franchise fee which should be well defined and fixed and attributable to the General Fund provided for the

Water fund. But this is not it. Just setting it at 12% is not it. It needs to be accounted for separately. There is a lot of support from General Fund to Water that can be defined but not this.

Right now the GRT that is devoted to Water fund is tied up entirely in debt service. Revenue from water use is not covering the costs. So when we call back those bonds, it will reduce \$3 million of debt service. He didn't think they could take away what is currently backing the bonds. So they need to look at that. Right now we are safe and we know all of it is going for debt service. Maybe Kelley Brennan has already vetted this that it is legal and it will happen after June.

Councilor Dominguez said we need to make sure we get that correspondence from Ms. Brennan. He asked if the Water Department is operating in deficit now.

Mr. Rodriguez said late last week, he was talking with Nick Schiavo, the Director, and Jason Mutton to look at different scenarios what various things would do to the rates in paying off debt service. There is no pressure on water rates. It is all because their operating fund is solvent. The need for GRT funds is not to cover operations but to cover debt service two times.

Councilor Dominguez surmised that when it was created, the revenue was not enough to just cover debt service but two times the rate. So the way he saw this is that it is much more transparent now than in the past.

This is a policy that is much more transparent than in the past because in the past the City have used the reserves to balance the budget. This spells it out clearly. The reality is that with NMGC, PNM and others, we have to negotiate with them because they pass that on to the customer. But he didn't think anyone wants to pass these on to the water customers. It is much better defined this way and he liked the provisions in letter D.

Councilor Bushee said the city already passed the costs on to the customer in 2009. Santa Fe has the second highest rates in the nation and some of best water conservationists in the nation. We just are not operating the water company as a business. You would be outraged if PNM was doing this. She didn't care what you call it, it is just balancing the budget on the backs of the water customers. She hoped the City comes out with something better. She didn't object to the concept of the franchise fee but it needs someone who can negotiate it and not use the reserves as a bank.

Councilor Ives said he is the one who brought forward some amendments so that the budget we approved could be legally funded. It faced tremendous opposition at the time. When this ordinance was passed, it was to use \$1.2 million from all enterprise funds and for years the City has operated with this practice and it went above \$1.2 million utilizing this mechanism. It was done for several years without objection until this most recent increase.

We need to keep all of our options on the table and not just look at the water fund and look at what needs to have a franchise fee. No one has stepped up to indicate what cuts in service and staffing would be undertaken. He had urged that comparison and it is worth engaging in. None of them are gone. So it needs to be more equitable for balancing income and expenses.

Councilor Bushee said Katherine Raveling in 2008 was advocating for the \$1.2 million annually for a little cushion. We lost that battle with her but it was never to be other than a franchise fee. It was a compromise with her then. So here we are and not making the tough choices. The City Manager

mentioned seven positions but she saw no cuts listed here. You want all things on the table. Cuts need to be on the table too. Our GRT is the highest or second highest in the State. People cringe at having that tax added on to their sales. It is not very balanced; the way we are approaching this budget. It is a discussion we haven't had.

Councilor Dominguez said the Finance Committee is working hard and not taking this lightly. We are having good debate about whether we should cut \$4 million or \$15 million. He was not sure how much we can cut and still provide a high quality of service to the citizens. We have already made a number of cuts through the years. Maybe we can go more than \$4 million but how far before we cut the quality of what we provide. Do we cut senior services, summer youth program, etc.? no one has been willing to say we need to cut 110 people from Community Services.

Councilor Bushee said this is the first time she has seen Finance Committee things in the agenda. She would like to see the full picture.

Councilor Dominguez wanted to see it too and he was not sure they would have to raise taxes.

Councilor Bushee said that for her, this has been a nonstarter from the beginning. In 1994, we just took on the water company with proprietary software and couldn't get a bill out. Now we can hardly get a bill out. This is misguided. Leave the water company alone. Make the tough choices. If not here, send it out as a referendum. The GRT is a burden on small businesses here and this is going to kill them.

Chair Trujillo said they tried a referendum with the gas tax and that got shot down.

The motion to approve passed by majority (2-1) voice vote with Councilor Bushee dissenting.

12. REQUEST FOR APPROVAL OF AN ORDINANCE ADOPTING A MUNICIPAL GROSS RECEIPTS TAX (COUNCILOR DOMINGUEZ) (OSCAR RODRIGUEZ)

Committee Review:

Council (Request to publish)	02/24/16
Finance Committee (Scheduled)	02/29/16
Council (Public hearing)	03/30/16

Councilor Bushee moved to deny. The motion died for lack of a second.

Councilor Dominguez moved to approve the request. Councilor Ives seconded the motion and it passed by majority (2-1) voice vote with Councilor Bushee dissenting.

13. REQUEST FOR APPROVAL OF AN ORDINANCE AMENDING SUBSECTION 12-9-3.9 OF THE UNIFORM TRAFFIC ORDINANCE RELATING TO ADA ACCESSIBLE PARKING VIOLATIONS REQUIRING A MANDATORY COURT APPEARANCE (COUNCILOR LINDELL) (NOEL CORREIA/SARA SMITH)

Committee Review:

Council (Request to publish)	02/24/16
------------------------------	----------